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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES

In Re: Dept. of Health Services
vs.
Lidio Joseph, M.F.T.

Petition No. 900102-~~00~~-001

To: Attorney Louis Kiefer
Capitol Place
21 Oak Street, Suite 310
Hartford, Connecticut 06106-8002

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-179, the attached Proposed Memorandum of Decision dated January 11, 1993 by hearing officer J. Preston Ruddell is hereby adopted as the final decision of the Commissioner of the Department of Health Services in this matter. A copy of the proposed memorandum of decision is attached hereto and incorporated herein. Accordingly, the Respondent's Certificate is revoked effective March 1, 1993.

February 22, 1993
Date

Susan S. Addiss
Susan S. Addiss, MPH, MURs
Commissioner
Department of Health Services

cc: Atty. Richard J. Lynch, Assistant Attorney General
Atty. Elizabeth Scanlon, Assistant Attorney General
Stephen A. Harriman, Bureau of Health System Regulation
Stanley K. Peck, Division of Medical Quality Assurance
David Pavis, Chief, Public Health Hearing Office

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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
BUREAU OF HEALTH SYSTEM REGULATION
DIVISION OF MEDICAL QUALITY ASSURANCE

PROPOSED MEMORANDUM OF DECISION

Lidio Joseph, M.F.T.

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Petition No. 900102-~~20~~-001

I. Introduction

1. Respondent Lidio A. Joseph, M.F.T., is and was certified as a marriage and family therapist by the State of Connecticut at all times relevant to this action, holding certificate No. 000020.

2. Prior to the institution of the instant charges, the Respondent was given the opportunity to show compliance with all lawful requirements for the retention of his certificate pursuant to Connecticut General Statutes Section 4-182(c). Record, Department of Health Services (hereinafter, "the Department") Exhibits 2, 4.

3. The Department presented the Commissioner of Health Services (hereinafter, "the Commissioner") with a **STATEMENT OF CHARGES** issued March 6, 1992 alleging Respondent's violations of Conn. Gen. State. sec. 20-195d (b), (c) and (d). Record, Department Exh. 1.

4. Marilyn Clark Pellett, Esq. was originally appointed by the Commissioner to act as hearing officer in this case. Record, Hearing Officer (hereinafter, "HO") Exh. 1. Upon her departure from the Department, J. Preston Ruddell, Esq. was appointed by the Commissioner to act as hearing officer and render a decision in this case based upon his review of the record, including the complete verbatim transcript of these proceedings.

5. Pursuant to a **NOTICE OF HEARING** dated February 3, 1992 (Record, Department Exh. 1) a hearing on the **STATEMENT OF CHARGES** was originally scheduled for April 1, 1992. At Respondent's request (see, Record, Department Exh. 11) the hearing officer rescheduled the hearing for May 13, 1992. Record, Department Exh. 1.

6. The hearing in this case commenced on May 13, 1992 and continued with further proceedings held on June 9, 1992 and July 6, 1992. Respondent appeared in person and through counsel throughout the hearings.

7. Respondent has admitted that at all times referenced in the **STATEMENT OF CHARGES** he was and is now the holder of Connecticut Marriage and Family Therapist certificate No. 000020, and that from approximately June of 1988 through November of 1988 he provided marriage and family therapy care and treatment to Steven Oeschger (hereinafter referred to as "the patient") as alleged in paragraphs 1 and 2 of the **STATEMENT OF CHARGES**. Record, Respondent's Exh. 1.

8. Respondent has denied the remaining allegations contained in the **STATEMENT OF CHARGES**. Record, Respondent's Exh. 1.

II. Facts

9. Respondent did not obtain a complete personal and family history on the patient.

10. Respondent made no diagnosis as to the patient's presenting problems.

11. Respondent established no therapeutic goals for the patient.

12. Respondent established no treatment plan for the patient.

13. Respondent did not provide any clinical or problem resolution therapy to the patient. Respondent testified that he did "soothing work" with the patient (TR p 530, l 12) rather than actual counselling, which the Respondent characterized as "a when you (i.e. the patient) want to Rap" process. (TR p 530, l 6)

14. Respondent testified that in his own mind, he established no "contract" with the patient (TR p 527, l 23-24; p 538, l 1-17; p 493, l 6-7) which Respondent defined as his making a commitment to the patient to provide ongoing therapy and treatment for a fixed period of time. For this reason, the Respondent testified that he did not actually provide any type of care to the patient designed to solve the patient's problems. (TR p 530, l 10-11)

15. Between June of 1988 and November of 1988 Respondent met with the patient for at least seven sessions for which he charged and the patient paid a fee.

16. Respondent testified that these sessions were "non-goal directed" (TR p 560, 1 10) and that Respondent "did not get into a position of resolving and helping [the patient] resolve [the patient's] problems." (TR p 495, 1 24; p 496, 1 1)

17. Between June of 1988 and November of 1988 Respondent took the patient to AA meetings and attended other AA meetings with the patient.

18. Between June of 1988 and November of 1988 Respondent conducted a number of counselling sessions, for which the patient paid a fee, at Respondent's home rather than his office.

19. Between June of 1988 and November of 1988 Respondent ate meals and had coffee with the patient on numerous occasions.

20. Between June 1988 and November of 1988 Respondent went on several excursions with the patient, including a trip to see the patient's airplane and another for shopping. In this time frame, Respondent invited the patient out to see at least one movie, which the two of them attended together.

21. Between June of 1988 and November of 1988 Respondent invited the patient to his home, and on numerous occasions went to the patient's home where the two of them were together alone.

22. Between June of 1988 and November of 1988 Respondent openly discussed his own marital problems and pending divorce with the patient.

23. Between June of 1988 and November of 1988 Respondent was under psychiatric care, but did not inform the patient of that fact.

24. Respondent was aware during this period of time that the patient had a dependent relationship with Respondent.

25. Respondent was aware during this period of time that the patient perceived him as the patient's professional therapist.

26. Respondent was aware during this period of time that the patient had difficulties with relationships.

27. Respondent was aware during this period of time that the patient was confused as to the Respondent's role in the patient's life.

28. Respondent was aware during this period of time of the potentially influential position he had in the patient's life.

29. Respondent was aware during this period of time that the patient was transferring parental feelings to him, and in particular hostility and dependency.

30. Respondent actively cultivated and participated in a social relationship with the patient at a time when he knew the patient looked to him to provide professional therapy.

31. Respondent told the patient during this period of time that he wanted to be the patient's very close, intimate friend. (TR p 42, l 13-14)

32. Respondent told the patient during this period of time that he was bisexual, and that the patient had bisexual or homosexual tendencies which the patient needed to confront with another man. (TR pp 42-43)

33. During this period of time, Respondent kissed the patient on the lips, touched the patient's genitals and had the patient touch his genitals.

34. During this period of time, Respondent disrobed in the patient's presence and had the patient disrobe in his presence.

35. Respondent told the patient that disrobing and touching one another's genitals was a means whereby the patient could confront and accept his own and Respondent's sexuality. (TR p 44, l 7-17)

36. Respondent called and had personal contact with the patient while in an intoxicated condition on one occasion either before or shortly after their last counselling session.

37. Respondent called the patient on numerous occasions after the patient indicated to Respondent that the patient wished to terminate therapy.

38. The patient told his sister, his present therapist and others that Respondent and he had disrobed and touched one another's genitals.

39. Barbara Lynch testified for the Department as an expert witness with regard to professional standards of conduct in Respondent's profession.

40. Ms. Lynch is fully qualified as an expert, and her testimony is clear as to specific professional standards applicable to Respondent's conduct in this case.

III. Conclusions of law

Respondent is charged in one count of violating the provisions of Connecticut General Statutes §195d(b), (c) and (d). In pertinent part, these sections provide:

Sec. 20-195d. Disciplinary Action Grounds. The department is authorized to conduct investigations and take disciplinary actions for any of the following reasons:... (b) illegal conduct, incompetence or negligence in carrying out professional functions; (c) any occupationally disabling emotional disorder or mental illness; (d) abuse or excessive use of drugs, including alcohol, narcotics or chemicals...

Concerning the professional standards by which Respondent's conduct is to be measured, the hearing officer accepts the testimony and report of Barbara Lynch as adequately delineating the same. The hearing officer further finds, both from Ms. Lynch's testimony and report and from Respondent's own testimony, that such standards for professional conduct on the part of marriage and family therapists are generally recognized and accepted within the profession. While the Respondent presented evidence that certain members of the profession held more liberal attitudes as to social contacts between therapist and patient than Ms. Lynch, Respondent acknowledged the potential problems which such contact could engender. The hearing officer finds that there is in fact no significant or material disagreement between Respondent and Ms. Lynch regarding the relevant professional standards. Rather, their basic disagreement is over the application of those standards to Respondent's actual conduct in this case.

The findings concerning professional standards of conduct which follow are derived solely from the record in this case, including the testimony and report of Barbara Lynch, and the testimony and other evidence submitted by the Respondent.

A. As to the Allegations of Paragraphs 4b and 4c of the STATEMENT OF CHARGES

There is no substantial evidence in the record to indicate that subsections (c) and (d) of section 20-195d Connecticut General Statutes, apply to the facts of this case. The Department has failed to sustain its burden of proof with respect to the allegations contained in paragraphs 4b and 4c of the **STATEMENT OF CHARGES**.

The remaining issue is whether the record contains facts which show one or more violations of Connecticut General Statutes §20-195d(b) by the Respondent.

B. As to the Allegations of Paragraph 3a of the STATEMENT OF CHARGES

It is a professional requirement for marriage and family therapists that they maintain proper boundaries with their patients. It is a violation of that requirement for a marriage and family therapist to engage in a sexual relationship with a current patient. It is likewise a violation of that standard of professional conduct for a therapist to disclose and discuss personal and emotional problems with his or her patient in the manner disclosed from the records in this case, and with a patient in the condition of the patient involved in this case. It is improper for a therapist to essentially merge his or her social and personal life with his or her professional life, so that patients cannot reasonably distinguish between the two.

It is abundantly clear from the record that the Respondent failed to maintain proper boundaries between himself and the patient as alleged in paragraph 3a of the **STATEMENT OF CHARGES**. While admittedly caring for and treating the patient in a therapeutic relationship, the Respondent voluntarily and consciously struck up a social relationship with the patient. He ate meals with the patient, went on various excursions with the patient, took the patient to AA meetings where he participated with the patient as a peer, encouraged the patient to come to his home, and went to the patient's home. Respondent actively encouraged the patient to become personally involved with the Respondent as a friend. Respondent confided intimate details of his personal life to the patient. Most egregiously, the Respondent initiated and participated in contact of a sexual nature with the patient.

The record shows that Respondent was aware of the patient's dependency upon him, the patient's transference, and the patient's inability to distinguish between Respondent as therapist, on the one hand, and Respondent as friend, confidant, companion, AA member, or lover on the other. Respondent knew of the patient's lack of discernment, and exploited that fact for Respondent's personal gratification.

The Department has presented sufficient evidence to show that Respondent failed to maintain proper boundaries between himself and the patient Steven Oeschger, as alleged in paragraph 3a of the **STATEMENT OF CHARGES**. Such conduct constitutes negligent professional conduct within the meaning of Connecticut General Statutes §195d(b).

C. As to the Allegations of Paragraph 3b of the STATEMENT OF CHARGES

It is a professional requirement for marriage and family therapists that they refrain from violating "dual relationship" principles. These principles are essentially but not entirely coextensive with the requirement that the therapists maintain proper boundaries with patients. The facts recited in part IIIB above amply demonstrate that the Respondent violated "dual relationship" principles. Respondent admitted that he desired and communicated to the patient that he wanted to be the patient's "professional friend", but in fact Respondent's role in the patient's life was decidedly unprofessional. A therapist must maintain the therapeutic relationship at all times while his or her therapeutic care and treatment of the patient continues. It is inconsistent with this requirement for the therapist to simultaneously attempt to maintain an intimate friendship with the patient.

In this case the Respondent invited the patient into his innermost life. He allowed the patient to come into his home unannounced, went to the patient's home, invited and went with the patient to the movies, went on other excursions of a social nature with the patient, called the patient for help while intoxicated, discussed his marital problems and divorce with the patient, related to the patient

as "one substance abuser to another", and had sexual contact with the patient. All of these actions on the Respondent's part took place while the patient was paying him to be the patient's therapist, and are violations of dual relationship principals as alleged in paragraph 3b of the STATEMENT OF CHARGES. These acts constitute negligent professional conduct within the meaning of Connecticut General Statutes §20-195d(b). However, such negligence is not separate and distinct from the negligence described in part III B. above, and the two violations of §20-195d(b) should be considered as one for purposes of this MEMORANDUM OF DECISION.

D. As to the Allegations of Paragraph 3c of the STATEMENT OF CHARGES

It is a professional requirement of marriage and family therapists that they obtain complete personal and family histories on their patients. It is a professional requirement that such therapists make a diagnosis of their patients' presenting problems. It is a professional requirement that such therapists establish therapeutic goals and a treatment plan for each patient. The Respondent in this case admittedly did none of these things.

Additionally, the Respondent did not provide proper therapeutic services to the patient in this case because he failed to maintain proper boundaries between himself and the patient and violated dual relationship principles in the manner set forth in parts III B and C above. It is noteworthy that the Respondent testified as to his awareness during his professional relationship with the patient of the patient's inability to sort out what roles the Respondent was playing in the patient's life.

The Respondent finds fault with the patient for not clearly discerning the times when the Respondent was acting as the patient's therapist as opposed to other roles. This attitude is particularly disturbing because it is apparent from the record that Respondent had the knowledge and ability to assist the patient in this regard, but apparently chose to engage in a course of conduct which fostered rather

than minimized that problem for the patient. It defies comprehension that Respondent, as a well educated and experienced professional therapist, would have believed that having frequent close personal contact as well as sexual contact with this vulnerable, unstable patient, would have been in any way beneficial. Respondent's engendering of confusing, conflicting emotions and further instability in the patient harmed rather than benefited the patient.

The Department has sustained its burden of proof to show that Respondent failed to provide proper therapeutic services to the patient, as alleged in paragraph 3d of the STATEMENT OF CHARGES. Such conduct on Respondent's part constitutes negligent professional conduct under Connecticut General Statutes §20-195d(b).

E. As to the allegations of Paragraph 3e of the STATEMENT OF CHARGES

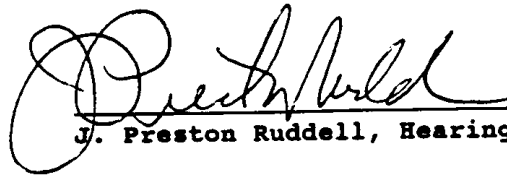
The allegations of paragraph 3e of the STATEMENT OF CHARGES are fairly subsumed within the allegations of the other subparts of paragraph 3. It has previously been determined that Respondent negligently rendered therapeutic services in violation of applicable law. For that reason, no additional findings are made with respect to this subpart.

III. Conclusion

Throughout the hearing the character and credibility of the Department's witness, Steven Oeschger, was called into question by the Respondent. Mr. Oeschger appeared and testified at public hearings about details of his past, for which he received no consideration. The issue of credibility as reflected in the record was considered by the hearing officer and is reflected in the Findings of Fact.

The Respondent's conduct in this case substantially deviated from appropriate standards for his profession, and warrants a severe penalty. It is the hearing officer's recommendation to the Commissioner that the Respondent's Certificate be revoked.

Dated this 11th day of January, 1993.

A handwritten signature in cursive script, appearing to read "J. Preston Ruddell", is written over a horizontal line.

J. Preston Ruddell, Hearing Officer

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